

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

PAUL STICKNEY and RICHARD BIRGH,

Petitioners,

v.

CITY OF SAMMAMISH,

Respondent.

Case No. 15-3-0017

**ORDER NUNC PRO TUNC
CORRECTING FINAL DECISION AND
ORDER**

I. SYNOPSIS

Petitioners challenge City of Sammamish Ordinance No. O2015-396 relating to the Comprehensive Plan Housing Element. After a Hearing on the Merits, the Board concluded:

- Ordinance O2015-396 fails to make adequate provisions for existing and projected needs of all economic segments of the community, contrary to RCW 36.70A.070(2) and RCW 36.70A.020(4), and
- The challenged Housing Element is inconsistent with the Countywide Planning Policies for King County because Ordinance O2015-396 failed to address the City's "share" of countywide housing needs, contrary to RCW 36.70A.100 and RCW 36.70A.210(1).

II. PROCEDURAL BACKGROUND

On December 15, 2016, Paul Stickney and Richard Birgh (Petitioners) filed a petition for review. The petition was assigned Case No. 15-3-0017.

A prehearing conference was held in person at the Sammamish City Hall on January 21, 2016. Petitioners Paul Stickney and Richard Birgh appeared as pro se. Subsequent to

1 the Prehearing Conference, Peter Ojala appeared on behalf of Petitioners. Respondent City
2 of Sammamish appeared through its attorneys Kim Adams Pratt and Amy Mill.

3 On February 12, 2016, the City of Sammamish filed a Motion to Dismiss Issues 4, 5,
4 and 6. The Motion to Dismiss was granted as to Issue 4 and denied as to Issues 5 and 6.

5 The Briefs and exhibits of the parties were timely filed and are referenced in this
6 order as follows:

- 7 • Petitioners' Prehearing Brief, March 28, 2016 (Petitioners' Brief)
- 8 • City's Response Brief, April 13, 2016 (City Brief)
- 9 • Petitioners' Reply Brief, April 25, 2016

10
11 Hearing on the Merits

12 The Hearing on the Merits was convened on May 5, 2016, in Sammamish,
13 Washington. Attorney Stephen Papik appeared on behalf of Petitioners. Respondent City of
14 Sammamish appeared through its attorneys Kim Adams Pratt and Amy Mill.

15 The hearing afforded each party the opportunity to emphasize the most important
16 facts and arguments relevant to its case. Board members asked questions seeking to
17 thoroughly understand the history of the proceedings, the important facts in the case, and
18 the legal arguments of the parties.

19 After the hearing was adjourned, on May 6, 2016, Petitioners filed a Second Motion
20 to Supplement the Record with calculations performed by Petitioner Paul Stickney
21 "determining that the City's internal housing needs far exceeds the City's growth target." It is
22 not clear whether these calculations by Petitioner were timely presented to the Sammamish
23 City Council, and they appear to represent additional, post-hearing arguments offered by
24 Petitioner outside of the briefing schedule established in the Pre-Hearing Order. Petitioners
25 failed to show under RCW 36.70A.290(4) that additional evidence would be necessary or of
26 substantial assistance to the Board in reaching its decision. Petitioners' Second Motion to
27 Supplement the Record is **denied**.

1 **III. BOARD JURISDICTION**

2 The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290
3 (2). The Board finds the Petitioners have standing to appear before the Board, pursuant to
4 RCW 36.70A.280(2)(b). The Board finds it has jurisdiction over the remaining subject matter
5 of the petition pursuant to RCW 36.70A.280(1).
6

7 **IV. BURDEN OF PROOF AND STANDARD OF REVIEW**

8 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
9 and amendments to them, are presumed valid upon adoption. This presumption creates a
10 high threshold for challengers as the burden is on the petitioners to demonstrate that any
11 action taken by the City is not in compliance with the GMA.
12

13 The Board is charged with adjudicating GMA compliance and, when necessary,
14 invalidating noncompliant plans and development regulations.¹ The scope of the Board's
15 review is limited to determining whether a County has achieved compliance with the GMA
16 only with respect to those issues presented in a timely petition for review.² The GMA directs
17 that the Board, after full consideration of the petition, shall determine whether there is
18 compliance with the requirements of the GMA. The Board shall find compliance unless it
19 determines that the County's action is clearly erroneous in view of the entire record before
20 the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). In
21 order to find the County's action clearly erroneous, the Board must be "left with the firm and
22 definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1, 121 Wn.2d*
23 *179, 201 (1993).*
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31 ¹ RCW 36.70A.280, RCW 36.70A.302.

32 ² RCW 36.70A.290(1).

1 **V. APPLICABLE STATUTES**

2 **RCW 36.70A.020**

3 The following goals are not listed in order of priority and shall be used
4 exclusively for the purpose of guiding the development of comprehensive
5 plans and development regulations:

6 . . . (4) Housing. Encourage the availability of affordable housing to all
7 economic segments of the population of this state, promote a variety of
8 residential densities and housing types, and encourage preservation of
existing housing stock.

9 **RCW 36.70A.070**

10 The comprehensive plan of a county or city . . . shall consist of a map or
11 maps, and descriptive text covering objectives, principles, and standards
12 used to develop the comprehensive plan. The plan shall be an internally
13 consistent document and all elements shall be consistent with the future
land use map. . . .

14 Each comprehensive plan shall include a plan, scheme, or design for each
15 of the following:

16 . . . (2) A housing element ensuring the vitality and character of
17 established residential neighborhoods that: (a) Includes an inventory and
18 analysis of existing and projected housing needs that identifies the
19 number of housing units necessary to manage projected growth; (b)
20 includes a statement of goals, policies, objectives, and mandatory
21 provisions for the preservation, improvement, and development of
22 housing, including single-family residences; (c) identifies sufficient land for
23 housing, including, but not limited to, government-assisted housing,
24 housing for low-income families, manufactured housing, multifamily
25 housing, and group homes and foster care facilities; and (d) makes
adequate provisions for existing and projected needs of all economic
segments of the community.

26 **RCW 36.70A.080(2)**

27 A comprehensive plan may include, where appropriate, subarea plans,
28 each of which is consistent with the comprehensive plan.

29 **RCW 36.70A.100**

30 The comprehensive plan of each county or city . . . shall be coordinated
31 with, and consistent with, the comprehensive plans . . . of other counties
32

or cities with which the county or city has, in part, common borders or related regional issues.

RCW 36.70A.210(1)

. . . a "countywide planning policy" is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100.

VI. ANALYSIS AND DISCUSSION OF LEGAL ISSUES PRESENTED³

- 1. Did the City perform a housing needs analysis in conformance with the Growth Management Act (GMA) as required by RCW 36.70A.020(4); RCW 36.70A.070(2); RCW 36.70A.110(1) and (2); RCW 36.70A.215(1), (2)(a) – (c), and (3)(b) and (c); WAC 365-196-050(2), (3), (4) and (5); WAC 365-196-305(3) and (8); and WAC 365-196-410(1)(a), (1)(d), (2)(a), (2)(b), (2)(c)(i), (2)(c)(iv), (2)(d), (2)(e)?**
- 2. Does the City's Housing Element goals and policies:**
 - a. Contemplate and make adequate provisions for existing deficiencies in and projected needs of all economic and demographic segments within the City as required by RCW 36.70A.070(2)(a) and (d); WAC 365-196-405(2)(c)(ii), (2)(f), (2)(l), (2)(m)(ii); WAC 365-196-410(1), (2)(b), (2)(c), (2)(d)(i), (2)(e)(iv), and (2)(f)?**
 - b. Implement housing strategies to address unmet needs consistent with Appendix 4, *Housing Technical Appendix*, to the 2012 King County Countywide Planning Policies?**

The City has enacted Ordinance O2015-396 updating its comp plan and housing element. Petitioners, who own developable property, challenge the housing element as not meeting the requirements of GMA because it doesn't adequately provide for affordable multifamily housing. The Board's analysis begins with background discussion of the housing affordability principles in the GMA, regional housing challenges in Central Puget Sound, and

³ Issue 4 was dismissed by the Board on March 9, 2016. Issues 3, 8, and 9 were not briefed by Petitioners and are thus deemed to be abandoned pursuant to WAC 242-03-590.

1 countywide planning policies in King County. These policies establish the framework for the
2 Board's analysis of Petitioners' legal issues and provide the context for our determination of
3 non-compliance.

4
5 **HOUSING AFFORDABILITY and GMA (Issues 1 and 2)**

6 A key statutory planning goal that guides development of GMA comprehensive plans
7 is to encourage the *availability of affordable housing to all economic segments of the*
8 *population*. RCW 36.70A.020(4). Under RCW 36.70A.070(2), a city's Housing Element *that*
9 *includes adequate provisions for existing and projected needs of all economic segments of*
10 *its community*. Affordable housing is commonly defined in terms of housing costs as a
11 percentage of gross household income. Housing is considered *unaffordable* when total
12 monthly housing costs (including utilities) exceed 30% of household income.⁴

13
14 As laid out in Vision 2040, housing affordability is a recognized problem in
15 Washington State. Thirty-six percent (36%) of Washington's households are considered
16 "cost-burdened" -- defined as households with housing costs that exceed 30% of their
17 household income.⁵ In the central Puget Sound region, the following household income⁶
18 categories and Area Median Income ("AMI") ranges are used to track housing affordability:
19

- 20 • Middle Income: 80%-120% of area median income
- 21 • Moderate Income: 50%-80% of area median income
- 22 • Low Income: Below 50% of area median income
- 23 • Very Low Income: Below 30% of area median income⁷

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26 ⁴ Vision 2040 Multicounty Planning Policies, p. 67 (2008). Following a four-year process, the Puget Sound
27 Regional Council adopted "VISION 2040," the updated Multicounty Planning Policies (MPPs) for King, Pierce,
28 Snohomish, and Kitsap Counties. Under RCW 36.70A.100 and RCW 36.70A.210(7), MPPs are part of the
29 GMA consistency framework requiring coordination and consistency of comprehensive plans of counties which
30 have "common borders or related regional issues."

31 ⁵ Washington State Affordable Housing Advisory Board, Housing Needs Assessment, Executive Summary
(Jan. 2015) p. 1.

32 ⁶ As of January 2015, the median family income for Washington State was \$72,900 per year, and the median
family income for King County was \$88,000 per year. Washington State Affordable Housing Advisory Board,
Housing Needs Assessment, Part D (Jan. 2015) pp. 1, 35.

⁷ Vision 2040 Multicounty Planning Policies, (2008) p. 67.

1 Finding affordable housing options near employment centers can be difficult
2 for many workers. Low- to middle-wage workers — such as teachers, health
3 care professionals, retail workers, administrative personnel, police officers,
4 and firefighters — who are essential to the economic and social vitality of a
5 community, often cannot afford to live in the places where they work. The
6 imbalance between where people live and where people work can result in
7 longer and more expensive commutes. More driving also leads to worsening
8 air quality, including greenhouse gas emissions.⁸

8 **Multicounty Planning Policies (MPPS)**

9 The Growth Management Act mandates coordination between jurisdictions that share
10 common borders or related regional issues.⁹ Therefore, growth planning necessarily takes
11 place within a regional context. The Puget Sound Regional Council (PSRC)¹⁰ is a Regional
12 Transportation Planning Organization under chapter 47.80 RCW which has been
13 designated by the governor as the Metropolitan Planning Organization for the central Puget
14 Sound region encompassing King, Kitsap, Pierce, and Snohomish counties.¹¹

15 The Puget Sound Regional Council promulgated “Vision 2040 Multicounty Planning
16 Policies” to promote regional plan consistency for King, Pierce, Snohomish, and Kitsap
17 Counties. VISION 2040 encourages local jurisdictions to adopt best housing practices and
18 innovative techniques that help increase the overall supply and diversity of affordable
19 housing, including:
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23 ⁸ Vision 2040 Multicounty Planning Policies (2008) p. 67.

24 ⁹ RCW 36.70A.100 states:

25 The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be
26 coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW
27 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or
related regional issues.

28 ¹⁰ The Board takes official notice of Vision 2040: The Growth Management, Environmental, Economic, and
Transportation Strategy for the Central Puget Sound Region, Puget Sound Regional Council (December 2009)
at viii. PSRC Resolution A-08-04, adopting Vision 2040, explains:

29 The [PSRC] is designated under federal law as the Metropolitan Planning Organization (required for
30 receiving federal transportation funds), and under state law as the Regional Transportation Planning
Organization for King, Kitsap, Pierce, and Snohomish counties. The Regional Council's members
31 include 71 of the region's 82 cities and towns. <http://www.psrc.org/growth/vision2040>

32 ¹¹ PSRC Resolution a-08-04, adopting Vision 2040, at ii.

1 (1) innovative land use practices, such as flexible zoning, streamlined
2 development regulations, and density bonuses,
3 (2) funding approaches, such as housing levies and tax exemptions,
4 (3) provision of needed infrastructure and public services, such as
5 transportation facilities and services, utilities, parks, and other amenities, and
6 (4) public education to increase awareness and acceptance of housing
7 alternatives and innovations, such as accessory dwelling units, small lot
8 single-family homes, townhomes and other multifamily housing options, and
9 mixed-use projects.¹²

10 VISION 2040 states that it is important to provide homeowners and renters with more
11 complete information on the true costs of housing — that is, costs beyond mortgage and
12 rent payments.¹³

13 **Countywide Planning Policies**

14 Additionally, the GMA requires a mandatory planning county, such as King,¹⁴ to
15 adopt Countywide Planning Policies (CPPs) in cooperation with the cities within its
16 jurisdiction. As the Department of Commerce explains in its Urban Growth Area Guidebook:

17 **County-wide Planning Policies, as required by RCW 36.70A.210, set the**
18 **general framework for coordinated land use and population planning**
19 **between the county, its cities, and others to ensure respective Comprehensive**
20 **plans are consistent with each other.**¹⁵

21 According to its Countywide Planning Policies, King County has an unmet need for
22 housing that is affordable for households earning less than 80% of AMI, i.e., households
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26 ¹² Vision 2040 Multicounty Planning Policies (2008) p. 68.

27 ¹³ One example of an innovative private sector program is a “Location Efficient Mortgage,” which adjusts the
28 amount that can be borrowed based on proximity of the home to transit. The rationale behind this program is
29 that if a household has the ability to use transit regularly, it may eliminate the need to own one or more
30 automobiles. Not having additional car payments and related maintenance costs provides more buying power
31 for that household, making mortgages more affordable and promoting more efficient use of urban land. Vision
32 2040 Multicounty Planning Policies (2008) p. 68.

¹⁴ RCW 36.70A.040.

¹⁵ The Board takes official notice of the Urban Growth Area Guidebook: Reviewing, Updating and
Implementing Your Urban Growth Area, Washington Department of Commerce (November 2012) at 71, 75.
(Emphasis added)

1 earning less than \$70,400 per year.¹⁶ Households within this category include low-wage
2 workers in services, retail, and other industries; single heads of households including
3 teachers, firefighters, administrative personnel, and health care professionals; and persons
4 on fixed incomes including many disabled and elderly residents. A high proportion of these
5 households spend a greater percentage of their income on housing than is typically
6 considered appropriate. This is especially true for low and very low income households
7 earning 50% or less (low) and 30% or less (very-low) of AMI.
8

9 King County and all its cities share in the responsibility to increase the supply of
10 housing that is affordable to these households.¹⁷ Under Policy H-3 of the King County
11 Countywide Planning Policies, each jurisdiction must include in its comprehensive plan an
12 inventory of the existing housing stock and an analysis of both existing housing needs and
13 housing needed to accommodate projected population growth over the planning period.¹⁸
14 According to the Housing Technical Appendix 4: “the housing analysis must consider local
15 as well as countywide housing needs because each jurisdiction has a responsibility to
16 address a significant share of the countywide affordable housing need.”¹⁹
17

18 According to Countywide Planning Policy H-1, the countywide need for housing by
19 percentage of Area Median Income (AMI) is:

<u>Household Income Range</u>	<u>Need for Housing</u>
50-80% of AMI (moderate):	16% of total housing supply
30-50% of AMI (low):	12% of total housing supply
30% and below AMI (very-low):	12% of total housing supply ²⁰

28 ¹⁶ Washington State Affordable Housing Advisory Board, Housing Needs Assessment, Part D (Jan. 2015) pp.
29 1, 35.

30 ¹⁷ King County Countywide Planning Policies (2012) p. 31.

31 ¹⁸ Petitioners’ Prehearing Brief Exhibit List Tab 4: Volume 1 – Sammamish Comprehensive Plan (2015) at
32 000111-112.

¹⁹ Petitioners’ Prehearing Brief Exhibit List, Tab CD 2.12 (Mar. 28, 2016).

²⁰ King County Countywide Planning Policies (2012) p. 32.

1 The countywide household income categories and the corresponding countywide
2 need are repeated in the Sammamish Comprehensive Plan Housing Element²¹ and
3 included in the Housing Element “Background Information.”²²
4

5 **City’s Action**

6 The Housing Element of the 2015 Sammamish Comprehensive Plan includes a
7 housing needs analysis and a housing growth target.²³ The City of Sammamish is a
8 member of A Regional Coalition for Housing (ARCH), which assists member cities in
9 developing housing policies and strategies.²⁴ During the City’s comprehensive plan periodic
10 update process, the City adopted the East King County Housing Analysis prepared by
11 ARCH to assist the City in revising its housing goals and policies.²⁵ The Housing Analysis is
12 made up of three components: a report highlighting key demographic and housing needs
13 information for East King County; a report highlighting Sammamish’s specific conditions,
14 unique characteristics, and efforts to address local housing needs; and an appendix with
15 detailed demographic and housing data supporting the two reports.²⁶
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17

18 The ARCH Housing Analysis includes an inventory of existing housing supply in East
19 King County and the City of Sammamish.²⁷ It also includes an inventory and analysis of
20 existing housing needs in the City, based upon household, population, and income
21 demographics; types of employment in the City’s workforce; ratio of local jobs to local
22 housing; and affordable housing data.²⁸ The Housing Analysis also identifies projected
23 housing needs, pointing specifically to the aging Baby Boom generation, employment
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27 ²¹ Sammamish Comprehensive Plan, Housing Element, Vol. 1 (Oct. 2015) [Attached as Tab 4 to Petitioners’
Prehearing Brief Exhibit List (Mar. 28, 2016) p. 77.

28 ²² Sammamish Comprehensive Plan, Background Information – Housing (Vol. 2, Jan. 2015).

29 ²³ Tab 5 to Petitioners’ Brief at 000269 – 000273.

30 ²⁴ Tab 13 to Petitioners’ at 000721.

31 ²⁵ Tab 5 to Petitioners’ Brief at 000269 – 000302.

32 ²⁶ Tab 5 to Petitioners’ Brief at 000274.

²⁷ Tab 5 to Petitioners’ Brief at 000284 – 000287, 000296 – 000297.

²⁸ Tab 5 to Petitioners’ Brief at 000295, 000297 – 000298.

1 growth in East King County, and ongoing needs for affordable housing.²⁹ The 25-year
2 growth target for Sammamish is identified in Exhibit R-1 of the Housing Analysis at 4,000
3 housing units, and pursuant to the CPPs, certain percentages of the overall housing target
4 are specified to meet affordable housing targets.³⁰ The Housing Analysis concludes by
5 stating, “through 2009, Sammamish was ahead of the pace indicated to achieve its *overall*
6 housing target” and that more time is needed to see the effect of the City’s strategies to
7 achieve its affordable housing goals.³¹

9
10 **Petitioners’ Challenge and Board’s Analysis**

11 Identifying needs

12 Petitioners assert that there is a housing affordability crisis in the City of
13 Sammamish³² and allege deficiencies in the Sammamish 2015 Comprehensive Plan
14 because the Housing Element does not include specific housing numbers for economic and
15 demographic needs to meet gaps that have arisen due to past and present housing policies.
16 Without this data, the City cannot begin to evaluate the adequacy of its policies in
17 addressing the deficiency of affordable housing options that threatens to persist and
18 increase into the future. The Board agrees.

19
20 The City argues that the GMA does not require the Housing Element to include the
21 level of specificity Petitioners would like to see as to very low-income, low-income, and
22 moderate-income categories in the community.³³ Thus Sammamish asserts that it satisfied
23 the GMA Housing Element requirements because its Housing Analysis included an
24 inventory and analysis of existing and projected housing needs, and also identifies the
25 number of *total* housing units needed to manage projected growth (4,640 units through
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29 _____
29 ²⁹ Tab 5 to Petitioners’ Brief at 000278 – 000282, 000297 – 000299.

30 ³⁰ Tab 5 to Petitioners’ Brief at 000290, 000337 – 000338.

31 ³¹ Tab 5 to Petitioners’ Brief at 000300. (Emphasis added)

32 ³² Petitioners’ Prehearing Brief (Mar. 28, 2016) at 24-25.

33 ³³ City Brief and Motion to Strike (Apr. 13, 2016) at 13-15.

2035).³⁴ However, the King County Countywide Planning Policies call for each city to address a significant share of the countywide affordable housing needs respectively for “moderate income” (16% of housing supply), “low income” (12% of supply), and “very-low income” (12% of supply).

The City’s failure to provide a needs analysis by income category was also noted by the Puget Sound Regional Council (PSRC). PSRC reviewed the City of Sammamish 2015 Comprehensive Plan Update and made recommendations on “Areas for Further Work” on the Housing Element:

The plan would be strengthened by taking the housing needs analysis and affordable housing policies further. The housing profile provides valuable insight on demographic, housing, and affordability characteristics within Sammamish, but does not quantify the future needs that are to be addressed in the plan. The housing element should *estimate the future need for affordable housing by income category*, based on King County housing affordability goals, which will aid in developing more specific policies and strategies to address this need.³⁵

Providing for all economic segments

RCW 36.70A.070(2)(d) requires that a city’s housing element “makes adequate provisions for existing and projected needs of all economic segments of the community,” but Sammamish’s Housing Analysis Table S-1 presents these countywide housing need targets but has no column showing Sammamish’s targets corresponding to a “share” of the countywide housing need.³⁶ WAC 365-196- 410(2)(c)(i) explains that:

The purpose of the needs analysis is to estimate the type and densities of future housing needed to serve all economic segments of the community. The housing needs analysis should compare the number of housing units identified in the housing inventory to the projected growth or other locally identified housing needs.

³⁴ City Brief and Motion to Strike (Apr. 13, 2016) at 13-15.

³⁵ PSRC Plan Review Report & Certification Recommendation (Dec. 14, 2015) p. 5. (Emphasis added) [Attached as Tab 8 to Petitioners’ Motion to Support Reply Briefing with Additional Evidence from the Record (Apr. 28, 2016)].

³⁶ Sammamish Comprehensive Plan, Background Information – Housing Analysis (Vol. 2, Jan. 2015) p. II-3.

1 The Housing Needs Analysis presented to the Sammamish Planning Commission in
2 October 2013 documents that *only 13 affordable housing units were created in the City of*
3 *Sammamish from 1993 to 2010*. Of those, six were affordable to low-income households
4 below 50% AMI and seven to moderate-income households from 50-80% AMI.³⁷ The
5 targets for Sammamish's regional share during the 20-year period were 38 and 27
6 respectively.

8 In 2011, the median household income in Sammamish was \$135,432. The income
9 distribution included 7% of Sammamish households in the "moderate income" category, 3%
10 in the "low income" category, and 3% in the "very-low income category."³⁸ Thirty-two percent
11 of Sammamish households were "cost-burdened," i.e., spending more than 30% of
12 household income on housing; and 9% of Sammamish households were "severely cost-
13 burdened," i.e., spending more than 50% of household income on housing.³⁹

15 According to the latest data from 2010, affordable housing stock by household
16 income category in Sammamish was respectively:

- 17 • Very Low Income: 0% of housing stock
- 18 • Low Income: 1% of housing stock
- 19 • Moderate Income: 4% of housing stock⁴⁰

20 On the record before us, 13% of households fall within the moderate to very low
21 income range but only 5% of housing stock is affordable for moderate or low income
22 households and none is affordable for very-low income households.

24 The City objects that Petitioners rely on conclusory statements and lay person
25 opinions.⁴¹ The Board notes petitioners may be laypersons but they have taken the time to
26 thoroughly review the City's numbers and make calculations based on data in the record as
27

28 ³⁷ Ex. CD 4-1, ARCH Housing Needs Analysis Chart 11 (October 2013) p. I-20.

29 ³⁸ Sammamish Comprehensive Plan, Background Information – Housing Analysis (Vol. 2, Jan. 2015) p. A-12.

30 ³⁹ Sammamish Comprehensive Plan, Background Information – Housing Analysis (Vol. 2, Jan. 2015) pp. A-15,
31 A-17.

32 ⁴⁰ Sammamish Comprehensive Plan, Background Information – Housing Analysis (Vol. 2, Jan. 2015) p. A-29.

⁴¹ City Brief at 12, 15, 17.

1 set forth above. For example, the City disputes Petitioners' analysis of the gap between
2 affordable housing needs in the community and affordable housing supply, but offers no
3 alternative calculations.⁴² Merely characterizing Petitioners' statistics as personal opinions
4 does not refute them.⁴³ To the contrary, **the Board finds** that the record amply supports
5 Petitioners' gap analysis.
6

7 Land Capacity for Affordable Housing:

8 Under RCW 36.70A.070(2)(c), the City's Housing Element must also "identif[y]
9 sufficient land for housing, including ... housing for low-income families, ... [and] multi-family
10 housing"⁴⁴ WAC 365-196-410(2)(d)(i) further explains that:
11

12 The housing needs analysis ... should be used to designate sufficient land
13 capacity suitable for development in the land use element.⁴⁵

14 As to land for multi-family housing, Sammamish contends its plan allows multifamily
15 residential development throughout the city. In addition to the Town Center, "zoning
16 regulations permit townhomes and apartments in all zones, and also permit duplexes and
17 cottage housing in most residential zones."⁴⁶ However, the Board notes that 95% of the City
18 is zoned R-1 to R-8.⁴⁷ In those zones, *multi-family housing is allowed only in historic*
19 *buildings*.⁴⁸ The City apparently has two landmarked buildings and about two dozen others
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25 ⁴² City Brief at 20.

26 ⁴³ See McGee and Howell, *Washington's Way II: The Burden of Enforcing Growth Management in the Crucible*
27 *of the Court and Hearings Boards*, 33 Seattle U. L. Rev. 549, 555-556 (2008) (comparing the burden of
28 persuasion, which is always on the petitioner, and the burden of production, which "must shift at some point
29 such that the respondent must refute the evidence proffered by the petitioner.")

30 ⁴⁴ RCW 36.70A.070(2)(c).

31 ⁴⁵ The City asserts Petitioners rely on WAC guidelines which are merely advisory and not regulatory. City Brief
32 at 12. The City is correct that the guidelines are advisory for cities and counties. However, the Board is
required to consider the guidelines in determining its cases. RCW 36.70A.320(3).

⁴⁶ City Brief at 19; Tab 5 at 000299.

⁴⁷ Tab 194, Zoning Designations Map. PT-002374.

⁴⁸ City Brief at 10, fn. 8 (citing SMC 21A.20.030(B)(3)).

1 identified in King County's inventory.⁴⁹ The King County Buildable Lands Report for 2014⁵⁰
2 indicates Sammamish neighborhoods have zoned capacity for only 18 multi-family units.
3 The Town Center mixed use area adds 1742 units of multi-family capacity. The City points
4 out it is primarily a bedroom community of single-family homes,⁵¹ but its record does not
5 provide any factual basis on which the Board can judge whether the provision for
6 approximately 2000 multi-family units meets the RCW 36.70A.070(2)(c) requirement to
7 identify sufficient land for multi-family housing. However, Petitioners have demonstrated the
8 City's failure to identify sufficient land for low-income housing, as detailed *supra*.
9

10 As regards workforce housing, the City's Housing Analysis points out that the pattern
11 of employment in the City has housing implications:

- 12 • First, Sammamish has an *unusual employment mix* compared to other cities
13 of its size in King County. In 2010, 26% of its workforce worked in public
14 education; Sammamish is the only mid-sized East King County city where the
15 percentage is greater than 15%.
- 16 • Second, *apart from school and government jobs*, average private sector
17 wages in Sammamish in 2008 (\$37,506) were the fourth lowest among East
18 King County cities, mainly because the *vast majority of occupations are*
19 *lower-paying, service-sector jobs*.⁵²

20 There are about 4600 jobs in Sammamish, one-third of them in public administration,
21 schools, and waste services. Of this workforce, only 700 live in the City while 3900 jobs are
22 filled by people who live elsewhere.⁵³ Relatively high rents may contribute to the low
23 proportion of the workforce that can afford to live in this community - necessitating longer
24 commutes and increasing private and public transportation costs which further shift financial
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26
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28 ⁴⁹ Sammamish Comprehensive Plan, "Historic Resources," and Figure LU-4 Historic Resources pp. LU 11, LU
29 13.

30 ⁵⁰ CD 4.4, King County Buildable Lands Report (2014) p. 98.

31 ⁵¹ Hearing Transcript at 41-42.

32 ⁵² Tab 5 to City's Brief, (January 2015) at 000298 (Emphasis added).

⁵³ Tab 5 to City's Brief, Sammamish 2035, Community Profile, (January 2014), p. 12 at 000204.

1 resources of households away from housing.⁵⁴ The City's Housing Element must "make
2 adequate provision" for existing and projected housing needs of this economic segment of
3 the community, and **the Board finds** that the City has failed to do so.⁵⁵

4 The Board has decided very few cases applying the housing element requirements of
5 GMA such that there is guidance in our jurisprudence. In *Futurewise v. City of Bothell*,⁵⁶ the
6 petitioners argued that Bothell had not provided sufficient land for low income housing.
7 Based on an analysis of the cost of land, Futurewise contended a zoned density of
8 15du/acre would be needed to make single-family detached housing affordable. However,
9 the Board found that Bothell had zoned enough land at that density to accommodate the 20-
10 year projected affordable housing needs and that other housing types might be part of the
11 planned accommodation. In contrast to the facts in *Futurewise*, Petitioners here have
12 identified facts that demonstrate the City failed to identify sufficient land for affordable
13 housing.
14

15 In sum, the Board is left with the firm and definite conviction that a mistake has been
16 made in adopting the City of Sammamish Housing Element. Petitioners have satisfied their
17 burden of proof and demonstrated that Sammamish Ordinance O2015-396 is clearly
18 erroneous in view of the entire record before the Board and in light of the goals and
19 requirements of the GMA.
20

21 Conclusion:

22 **The Board finds and concludes** that Ordinance O2015-396 violates RCW
23 36.70A.070(2) because the City of Sammamish failed to establish any numeric or
24 percentage goals for the City's "share" of countywide needs in the moderate, low, and very
25 low income housing categories and failed to make adequate provisions for existing and
26 projected needs of all economic segments of the community. Ordinance O2015-396 was not
27
28

29 ⁵⁴ Sammamish Comprehensive Plan, Background Information – Housing Analysis (Vol. 2, Jan. 2015) pp. I-24
30 & II-4.

31 ⁵⁵ RCW 36.70A.070(2)(d).

32 ⁵⁶ *Futurewise v. City of Bothell*, GMHB Case No. 07-3-0014, Final Decision and Order (August 2, 2007), p. 9-
10, aff'd *Futurewise v CPSGMHB*, 150 Wn. App. 1041 (2009)(unpublished).

1 guided by the GMA Planning Goal for Housing in RCW 36.70A.020(4) because it fails to
2 encourage the availability of affordable housing to all economic segments of the
3 population.⁵⁷

- 4 **5. Are the development regulations for the Sammamish Town Center subarea**
5 **plan internally consistent with the Vision, Housing, and Land Use Elements**
6 **of the City's 2015 Comprehensive Plan as required by RCW**
7 **36.70A.070(preamble) – (2), WAC 365-196-300(3)(b)(ii), WAC 365-196-**
8 **400(1)(c), WAC 365-196-500, WAC 365-196-800(1), and WAC 365-196-810?**
9 **6. Are the development regulations for the Sammamish Town Center subarea**
10 **plan externally consistent with the Vision, Housing, and Land Use elements**
11 **of the 2012 King County Planning Policy and Puget Sound Regional Council**
12 **Vision 2040 as required by RCW 36.70A.100, RCW 36.70A.210(1); WAC 365-**
13 **196-405(2)(a), WAC 365-196-410(2)(a)(ii), 410(2)(e)(ii), WAC 365-196-510,**
14 **WAC 365-196-520, and WAC 365-196-715(1)?**
15 **7. Is the 2,000 dwelling unit limit identified in the Sammamish Town Center**
16 **Subarea Plan compliant with “affordable housing” planning as**
17 **contemplated in RCW 36.70A.070(2) and WAC 365-196-410(2)(e)(iv)?**

18 Under Legal Issues 5, 6, and 7, Petitioners raise concerns about the “development
19 regulations for the Sammamish Town Center subarea plan” and “the 2,000 dwelling unit limit
20 identified in the Sammamish Town Center Subarea Plan.”

21 In June 2008 the City adopted the Sammamish Town Center Plan which
22 implemented the City's vision for a new “heart of the city” with “a balance of civic and
23

24 ⁵⁷ WAC 365-196-410(2) explains that the implementation plan for the housing element should evaluate the
25 capacity of local public and private entities and the availability of financing to produce housing to meet the
26 identified need. The 2015 ARCH Housing Needs Analysis states that meeting low-income housing goals in
27 East King County has been elusive, with cities cumulatively achieving only 25% of their low-income goals.
28 Almost all of the lower income housing has required some type of “direct assistance.”⁵⁷ To address this need,
29 Sammamish donated 1.47 acres of land to Habitat for Humanity in 2013. The Record did not contain
30 information as to whether and how much affordable housing has been built on this property, but the City does
31 have some incentive provisions for affordable housing the effectiveness of which the Board acknowledges
32 remain to be evaluated in the future. Although ARCH seems to identify direct assistance as a necessary
strategy in order to make progress on low income housing, the GMA housing element requirements do not
prescribe a process to identify and encourage opportunities for some form of direct assistance to low-income
housing developments. The GMA authorizes, but does not require, enactment of affordable housing incentive
programs providing for the development of low-income housing units through development regulations. RCW
36.70A.540.

1 community amenities, retail and office opportunities, residential choices, and environmental
2 functions and values.”⁵⁸ The Town Center Plan included this Policy H-1.1: “*Adopt*
3 *development regulations that allow for up to 2,000 dwelling units in the Town Center.*” The
4 2015 Housing Analysis refers to the Town Center Plan, in pertinent part as follows:

5 The City’s 2008 Town Center Plan calls for up to 2,000 dwelling units to
6 promote development of housing that may not otherwise be built in the
7 city, through a mixture of multi-family units in mixed-use and stand-alone
8 structures, townhouses, cottages, and detached single-family dwellings.
9 New code amendments allow more homes and a wider variety of housing
10 types in the Town Center. Moreover, these homes will have convenient
 walking access to shopping, open space, and transit.⁵⁹

11 The record does not indicate whether the Town Center Plan was appealed or challenged
12 when it was adopted in 2008 by Ordinance No. O2008-232.

13 In the present case, Petitioners challenge Ordinance No. O2015-396 (passed Oct.
14 13, 2015) which adopted the 2015 Comprehensive Plan.⁶⁰ The text of Ordinance O2015-
15 396 makes no reference to the 2008 Town Center Plan. The 2015 Comprehensive Plan,
16 which is attached to Ordinance O2015-396, does refer to the 2008 Town Center Plan as a
17 previously adopted document. But the 2015 Comprehensive Plan does not appear to
18 include or incorporate the 2008 Town Center Plan.⁶¹ Since the Town Center Plan is not part
19 of the challenged Ordinance O2015-396, the Board cannot consider any of Petitioners’ legal
20 issues alleging GMA non-compliance as to the Town Center Plan. Those claims would have
21 to have been raised in 2008 when the Town Center Plan was adopted. RCW 36.70A.290(2).

22 Development regulations for the Town Center were enacted subsequent to the 2008
23 Town Center Plan adoption and are codified as Title 21B of the Sammamish Municipal
24 Code (“SMC”). Title 21B permits a maximum of 2000 dwelling units within the Town Center
25
26
27

28
29 _____
30 ⁵⁸ Tab 63 of City Brief at 003088.5 – 003088.6.

31 ⁵⁹ Sammamish Comprehensive Plan, Background Information – Housing Analysis (Vol. 2, Jan. 2015) p. II-5.

32 ⁶⁰ Tab 6 to Petitioners’ Prehearing Brief.

⁶¹ It is for the City to consider whether the Town Center Plan should be re-enacted or amended to address
GMA Housing Element requirements – the Town Center Plan is not part of the present appeal.

1 zones, and requires that not less than 10 percent of any residential development be
2 affordable housing units.⁶² Title 21B also includes additional affordable housing incentives
3 (SMC 21B.75.020) and a transfer of development rights program (SMC 21B.25.040) to allow
4 for variety and flexibility in residential development within the Town Center.⁶³ Since
5 challenged Ordinance O2015-396 did not adopt or amend any development regulations, the
6 Board cannot consider any of Petitioners' legal issues alleging GMA non-compliance as to
7 development regulations.
8

9 What is left for consideration by the Board are Petitioners' assertions of
10 Comprehensive Plan inconsistencies allegedly created by Ordinance O2015-396, internally
11 within the plan or externally as to Countywide Planning Policies.
12

13 **INTERNAL PLAN INCONSISTENCY (Issue 5)**

14 Petitioners allege the cap of 2000 units in the Town Center subarea plan is clearly
15 erroneous because it prevents the City from developing sufficient housing to address unmet
16 needs and is also based on inaccurate vehicle trip generation rates identified in the 2007
17 Town Center SEPA analysis.⁶⁴ Petitioners disagree with the 2000-unit cap adopted in 2008
18 but they have failed to point to any internal plan inconsistencies created by the challenged
19 2015 ordinance. But Petitioners are precluded from challenging the City's actions taken in
20 2007-2008. Regardless, the 2015 Housing Analysis is actually consistent with the 2000
21 dwelling unit limit called for in the 2008 Town Center Plan.⁶⁵
22

23 Petitioners have failed to satisfy their burden of proof under Issue 5 to show that
24 Ordinance O2015-396 created an internal Comprehensive Plan inconsistency. Accordingly,
25 **Issue 5 is dismissed.**
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30 ⁶² Tab 5 of City Brief at 000299; see also SMC 21B.25.040, 21B.75.020(1).

31 ⁶³ Tab 5 of City Brief at 000299.

32 ⁶⁴ Petitioners' Prehearing Brief (Mar. 28, 2016) at 19-22.

⁶⁵ Sammamish Comprehensive Plan, Background Information – Housing Analysis (Vol. 2, Jan. 2015) p. II-5.

1 **EXTERNAL INCONSISTENCY (Issue 6)**

2 Petitioners allege an external inconsistency between the Sammamish
3 Comprehensive Plan Housing Element and the King County Countywide Planning Policies,
4 which contain the following pertinent language:

5 As is noted in policy H-1, H-2, and H-3, the housing analysis must
6 consider local as well as countywide housing needs because each
7 jurisdiction has a responsibility to address a significant share of the
8 countywide affordable housing need.⁶⁶

9 WAC 365-196-410(2)(c)(iv) provides that the “analysis should analyze consistency
10 with county-wide planning policies, and where applicable, multicounty planning policies,
11 related to housing for all economic segments of the population.”
12

13 In the Board’s analysis and conclusions under Issues 1 and 2 above, the Board
14 found that Sammamish Ordinance O2015-396 is noncompliant with RCW 36.70A.070(2)
15 because Sammamish failed to establish any numeric or percentage goals for the City’s
16 “share” of countywide needs in the moderate, low, and very low income housing categories.

17 Based on those findings of noncompliance with RCW 36.70A.070(2), the **Board**
18 **finds and concludes** that the challenged Housing Element is inconsistent with the
19 Countywide Planning Policies because Ordinance O2015-396 failed to address the City’s
20 “share” of countywide housing needs, contrary to RCW 36.70A.100 and RCW
21 36.70A.210(1).
22

23
24 **2000 DWELLING UNIT CAP IN SAMMAMISH TOWN CENTER PLAN (Issue 7)**

25 Issue 7 alleges non-compliance as to the 2000 dwelling unit limit identified in the
26 2008 Sammamish Town Center Subarea Plan, which cannot be considered by the Board in
27 the present case because the appeal period on the 2008 Ordinance has long since expired.
28 Accordingly, **Issue 7 is dismissed**.
29
30
31

32 ⁶⁶ King County Countywide Planning Policies (2012) pp. 32-33, 55.

1 **INVALIDITY**

2 Petitioners asked the Board to find the City's Housing Element and Town Center
3 subarea plan invalid but Petitioners failed to adduce evidence showing that continued
4 validity of Ordinance O2015-396 would substantially interfere with the fulfillment of identified
5 GMA planning goals.⁶⁷ Accordingly, the Board denies the request for invalidity.
6

7
8 **VII. ORDER**

9 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
10 parties, the GMA, prior Board orders and case law, having considered the arguments of the
11 parties, and having deliberated on the matter, the Board Orders:

- 12 • Sammamish Ordinance O2015-396 fails to make adequate provisions for existing
13 and projected needs of all economic segments of the community, contrary to
14 RCW 36.70A.070(2) and RCW 36.70A.020(4).
15 • The challenged Housing Element is inconsistent with the Countywide Planning
16 Policies for King County because Ordinance O2015-396 failed to address the
17 City's "share" of countywide housing needs, contrary to RCW 36.70A.100 and
18 RCW 36.70A.210(1).
19 • Legal issues 5 and 7 are dismissed.
20 • Petitioners have satisfied their burden of proof and demonstrated that City of
21 Sammamish Ordinance O2015-396 relating to the Comprehensive Plan Housing
22 Element is clearly erroneous in view of the entire record before the Board and in
23 light of the goals and requirements of the GMA.
24
25

26
27 ⁶⁷ RCW 36.70A.302 states in pertinent part:

28 The board may determine that part or all of a comprehensive plan or development regulations are invalid if the
29 board:

30 (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

31 (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the
32 continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the
goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be
invalid, and the reasons for their invalidity.

- 1 • Ordinance O2015-396 is remanded to the City of Sammamish to take further
2 actions to comply with the Growth Management Act in accordance with the
3 following schedule:

4

Item	Date Due
Compliance Due	December 9, 2016
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	December 23, 2016
Objections to a Finding of Compliance	January 6, 2017
Response to Objections	January 16, 2017
Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 5721566#	January 26, 2017 10:00 a.m.

12

13 SO ORDERED this 13th day of July, 2016.

14
15
16 Raymond L. Paoella, Board Member

17
18
19 Cheryl Pflug, Board Member

20
21 **Note: This is a final decision and order of the Growth Management Hearings Board**
22 **issued pursuant to RCW 36.70A.300.⁶⁸**

23
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28 ⁶⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
29 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.

30 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
31 as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be
32 served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC
242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the
Growth Management Hearings Board is not authorized to provide legal advice.